

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 17TH DAY OF FEBRUARY 2020

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

A.Nos.617 and 131 of 2020
in
C.S.No.497 of 2019

M/s.Salma Export Import Agency,
Represented by its Managing Partner, Mr.Abdul Basith
New No.334, Old No.142, Purasawalkam High Road,
Kellys, Chennai 600 010. ..Plaintiff

-Versus-

1.M/s.Eastern Chrome Tanning Corporation Private Limited,
Third Floor, Mashkur, Krishnamma Road,
Nungambakkam, Chennai-600 034.
Represented by its Directors.

2.Mrs.Thadey Mohamadi Begum
Director,
Eastern Chrome Tanning Corporation Private Limited
5/3, Anderson Road, Chennai-6.

3.Mr.Kandrikar Ehsan Ahmed,
Managing Director
Eastern Chrome Tanning Corporation Private Limited
5/3, Anderson Road, Chennai-6.

4.Mr.Kandrikar Ameenur Rahman
Director
Eastern Chrome Tanning Corporation Private Limited
5/3, Anderson Road, Chennai-6.

5.Mr.Kandrikar Shahid Mansoor
Director
Eastern Chrome Tanning Corporation Private Limited
No.2A Anderson Road,
Chennai-600 006.

6.Mrs.K.Thaseen Fatheema
Wholetime Director
Eastern Chrome Tanning Corporation Private Limited
44, Barnaby Road, Kilpauk, Chennai-10.

7.K.Lubna Maryam
Director
Eastern Chrome Tanning Corporation Private Limited
D/o.K.Ameenur Rahman,
3, Anderson Road,
Nungambakkam, Chennai 600 006. ..Defendants

A.No.617 of 2020:

1.Mrs.Thadey Mohamadi Begum
Old Door No.1 & 2, New No.3/2,
T.Rahman Sahib Street,
Ambur-635 802. ..Applicant/2nd Defendant

-Versus-

M/s.Salma Export Import Agency,
Rep. by its Managing Partner, Mr.Abdul Basith
New No.334, Old No.142, Purasawalkam High Road,
Kellys, Chennai 600 010. ..1st Respondent/Plaintiff

2.M/s.Eastern Chrome Tanning Corporation Private Limited,
Represented by its Directors
Third Floor, Mashkur, Krishnamma Road,
Nungambakkam, Chennai-600 034. ..2nd Respondent/1st Defendant

3.Mr.Kandrikar Ehsan Ahmed,
Managing Director
M/s. Eastern Chrome Tanning Corporation Private Limited
5/3, Anderson Road,
Chennai-600 006. ..3rd Respondent/3rd Defendant

4.Mr.Kandrikar Ameenur Rahman

Director

M/s.Eastern Chrome Tanning Corporation Private Limited

5/3, Anderson Road,

Chennai-600 006.

..4th Respondent/4th Defendant

5.Mr.Kandrikar Shahid Mansoor

Director

M/s.Eastern Chrome Tanning Corporation Private Limited

No.2A Anderson Road,

Chennai-600 006.

..5th Respondent/5th Defendant

6.Mrs.K.Thaseen Fatheema

Whole Time Director

M/s.Eastern Chrome Tanning Corporation Private Limited

44, Barnaby Road, Kilpauk,

Chennai-600 010.

...6th Respondent/6th Defendant

7.K.Lubna Maryam

Director

Eastern Chrome Tanning Corporation Private Limited

No.3, Anderson Road,

Nungambakkam, Chennai 600 006.

..7th Respondent/7th Defendant

Application praying that this Hon'ble Court be pleased to pass an order of summary judgment dismissing the claim against the Applicant herein under Order XIII A Rule 3(A) of the C.P.C.

A.No.131 of 2020:

1.Mr.Kandrikar Ehsan Ahmed,

Managing Director

M/s.Eastern Chrome Tanning Corporation Private Limited

5/3, Anderson Road, Chennai-600 006.

..1st Applicant/3rd Defendant

2.Mr.Kandrikar Shahid Mansoor

Director

M/s.Eastern Chrome Tanning Corporation Private Limited

No.2A Anderson Road,

Chennai-600 006.

..2nd Applicant/5th Defendant

3.Mrs.K.Thaseen Fatheema

Whole Time Director

M/s.Eastern Chrome Tanning Corporation Private Limited

44, Barnaby Road, Kilpauk,

Chennai-600 010.

...3rd Applicant/6th Defendant

4.K.Lubna Maryam

Director

Eastern Chrome Tanning Corporation Private Limited

No.3, Anderson Road,

Nungambakkam, Chennai 600 006.

..7th Respondent/7th Defendant

-Versus-

1.M/s.Salma Export Import Agency,

Rep. by its Managing Partner, Mr.Abdul Basith

New No.334, Old No.142, Purasawalkam High Road,

Kellys, Chennai 600 010.

..1st Respondent/Plaintiff

2.M/s.Eastern Chrome Tanning Corporation Private Limited,

Represented by its Directors

Third Floor, Mashkur, Krishnamma Road,

Nungambakkam, Chennai-600 034.

..2nd Respondent/1st Defendant

3.Mrs.Thadey Mohamadi Begum,

Director,

Eastern Chrome Tanning Corporation Private Limited

5/3, Anderson Road, Chennai-600 006.

..3rd Respondent/2nd Defendant

4.Mr.Kandrikar Ameenur Rahman,

Director,

Eastern Chrome Tanning Corporation Private Limited

5/3, Anderson Road, Chennai-600 006.

..4th Respondent/4th Defendant

Application praying that this Hon'ble Court be pleased to pass an order of summary judgment dismissing the claim against the Plaintiff herein under Order XIII A Rule 3(A) of the C.P.C.

These applications have been filed by defendants 2, 3,5,6 and 7 to

pass a summary judgment under Order XIII A, Rule 3(A) of C.PC read

with Commercial Courts Act on the ground that the plaintiff has no prospect of success in the present suit filed for recovery of money.

2. The prime contention of these applicants is that in a suit for recovery of money based on goods sold and delivered to the first defendant company, contrary to the settled legal preposition of law that the company is a distinct legal entity and the liability of the company cannot be fastened on the directors of the company personally, the directors of the company are arrayed as other defendants. The other point canvassed in these application is regarding the limitation. According to the applicant, for the alleged transaction of goods sold and supplied to the 1st defendant company during the year 2013, the suit has been laid during the month of June, 2019, which is beyond the period of limitation.

3. Learned counsel appearing for the applicant /defendant relying upon the judgment of the Madhya Pradesh High Court reported in *[(2009(3) MPLJ 332) (Vimalchand v. M/s Arora Distiller Pvt. Ltd. Company Vidisha and another)]* would emphasis that a registered company is a distinct legal entity vis-a-vis its directors any actionable claim against the company will not bind on the directors.

4. Per contra, the learned counsel appearing for the plaintiff would submit that the 1st defendant company purchased goods under the invoices from 29.03.2013 to 04.11.2013 and gave five cheques towards the

sale consideration of Rs.4,25,00,000/- on 09.01.2015. On presentation of those cheques, the same were returned for "want of fund". Hence, a criminal prosecution under Section 138 of the Negotiable Instruments Act, was launched against the 1st defendant-company as well as its directors. In the said circumstances, the directors of the company entered into an memorandum of understanding with the plaintiff's company on 09.11.2015. As per the terms of the memorandum of understanding, the company and its directors agreed to settle the cheque amount of Rs.4,25,00,000/- involved in the criminal complaint and one of its directors handed over the original title deed of his property for realisation of the amount. Further, the directors for the company have specifically agreed and given an undertaking to pay the balance amount of Rs.1,75,00,000/- on or before 31.03.2016. Having failed to honour the terms of memorandum of understanding, the present suit has been filed.

5. As far as the question of limitation is concerned, the statement of accounts pertaining to the 1st defendant company will show that the Letter of Credit given by them was discounted on 01.07.2016, which is the last transaction between the parties. Since the suit has been filed on 10.06.2019, the suit is well within the period of limitation. Further, the learned counsel would contend that the summary judgment can be passed

only if there is prospect of success for the plaintiff. In this case, the plaintiff

having made out a *prima facie* case for trial, hence, summary judgment cannot be passed.

6. In this case, on going through the facts and terms of the memorandum of understanding, this Court finds *prima facie* the suit has been filed not merely based on the goods sold and delivered to the 1st defendant company, but the subsequent event like dishonouring of cheques issued by the directors on behalf of the company and memorandum of understanding wherein the directors have signed the memorandum of understanding as confirming parties indicate that they have agreed personally to settle the money due and payable to the plaintiff, on a specific agreement that the plaintiff will withdraw the criminal case filed against them before the Magistrate Court under Section 138 of the Negotiable Instruments Act. The said memorandum of understanding is subsequent to the trade transaction between the plaintiff and the 1st defendant. The parties have agreed among themselves that the money due will be settled and *as quid pro qua* the plaintiff will withdraw the criminal complaint laid against the company and its directors. Therefore, the contention of the learned counsel appearing for the applicant and the judgment cited *supra* are not applicable to the facts of the case.

7. Regarding the limitation, the statement of accounts relied by

the plaintiff indicates that the last transaction between the plaintiff and the

1st defenant was on 01.07.2016. The Docket of the plaint carries the seal of this High Court dated 10.06.2019. The Registry has initially returned the plaint on 20.06.2019 pointing out certain defects. Then, the plaint has been represented and taken on file on 02.07.2019.

8. In such circumstances, the issue whether the suit was filed within the period of limitation or not became a mixed question of fact and law and it came to ascertain only in trial. This will not be a ground for passing a summary judgment, where the Act clearly enumerates the grounds and circumstances under which the summary judgment can be passed. The facts and circumstances of this case does not fall under any of the category under Section XIII A of C.P.C. Hence, these applications are dismissed. No costs.

Sd./-G.J.J

17.02.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 26/02/2020

COURT OFFICER(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.